C.S. 1002 (1)

(3)

IN THE HIGH COURT OF JUDICATURE AT BILASPUR (C.G.)

WRIT PETITION NO. 2597 /2004

PETITIONER

Ramesh Kumar Jaiswal,
S/o. Late Shri G.P. Jaiswal,
Aged about 40 years,
Occupation – service,
Presently working as
Assistant Teacher,
Balak Ashram, Premnagar,
District Surguja (C.G.)

P. R. No. 2604/04
Presented by Shri ABaj. Ishan
dated 16-8-04

VERSUS

RESPONDENTS

1. State of Chhattisgarh,
Through Secretary,
Department of School
Education, Mantralaya,
D.K.S. Bhawan, Raipur (C.G.)

2. Collector(Tribal Development),
Ambikapur,
District Surguja (C.G.)

RECEIVED COPY 16/8/04
Clerk to A.G. Bilaspur

3. Ashok Kumar Sahu,
Sahu Diagnostic Centre,
Premnagar,
District Surguja (C.G.)

4. Ashok Kumar Jagate,
MLA Representative,
Premnagar,
District Surguja (C.G.)

WRIT PETITION UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF WRIT IN THE NATURE OF MANDAMUS, CERTIORARI AND FOR OTHER SUITABLE WRIT OR WRITS, ORDER OR ORDERS, DIRECTION OR DIRECTIONS.

(24)

HIGH COURT OF JUDICATURE AT BILASPUR (C.G)

Writ Petition No.2597 of 2004

Ramesh Kumar Jaiswal

Vs.

State of Chhattisgarh and others

ORDER

Shrivastava. 22.2.05 Seen

Post for 23.02.2005

Sd/-
Sunil Kumar Sinha
Judge

22.2.05 Seen

HIGH COURT OF JUDICATURE AT BILASPUR (C.G)

Writ Petition No.2597 of 2004

Ramesh Kumar Jaiswal

Vs.

State of Chhattisgarh and others

Shri Manindra Shrivastava, Sr. Advocate with Shri Ashish Shrivastava, counsel for the petitioner.

Shri U.N.S. Deo, Govt. Advocate for respondents No.1 & 2.

None for respondents no. 3 & 4.

O R D E R

(23.02.2005)

Sunil Kumar Sinha, J.,

The petitioner is an Assistant Teacher. He has challenged the validity of his transfer order dated 31.7.2004 (Annexure P-1) by which he has been transferred from Balak Ashram, Premnagar, Block Premnagar, Distt. Sarguja to Primary School, Dhavli, Block Ramchanderpur, Distt. Sarguja.

(2) The case of the petitioner is that he was posted in Balak Ashram, Premnagar on 14.6.2000 and since then he was working on the said place. There are in all 4 Assistant Teachers including the petitioner against six sanctioned posts. Thus, still there are two vacancies lying in the Ashram. The three other assistant teachers who are posted there are senior to the petitioner and are posted there prior to the date of posting of the petitioner. The

petitioner alleges that though his transfer has been shown to be on administrative grounds, but in fact he has not been transferred on any administrative exigencies, but has been transferred on account of recommendations of two local politicians i.e., respondents no.3 & 4 herein who approached the Collector and told him that the petitioner should be transferred because the brother of the petitioner namely Virendra Kumar Jaiswal is a Congress worker. He further alleges that some frivolous and motivated complaint has been made against the petitioner and in fact, the transferring authority, the Collector ought not to have taken cognizance of that unless it was given in writing, but in order to please the politicians the Collector transferred the petitioner. His transfer is colourable exercise of power as the collector did not conduct any enquiry on such report. Therefore, on a mere complaint made, the order of transfer passed by the Collector is an out come of malafide.

(3) Return has been filed on behalf of respondents no.1 and 2. These respondents have denied the allegations raised by the petitioner. It is contended vide para 2 of the return that the petitioner has made vague and frivolous allegations that he has been transferred due to political reasons because his brother is a Congress party worker. It is also contended that the allegations in relation to the transfer at the instance of respondents no.3 and 4 are incorrect and are, in fact, vague and frivolous. It has also been added vide reply to Para 5.8 that the transfer of the petitioner has

been done purely on administrative exigencies and the same is within the frame work of the transfer policies of the State.

(4) Respondents no.3 and 4 have not caused their appearance though they have been served.

(5) Learned counsel for the petitioner argues that in fact the impugned transfer order is actuated by malafides. He further argues that the transfer has been effected at the behest of respondents no.3 and 4 and is a politically motivated transfer. The Collector has exercised his jurisdiction on extraneous considerations perfectly succumbing to the political pressure created on him. There is no exigency of service or public interest and the action of authority is arbitrary.

(6) First of all, the point of writ jurisdiction of the Court as to interfere with an order of transfer is to be considered. It has been held by the apex Court in the matter of ***State of U.P. and others, Appellats –Vs- Gobardhan Lal, Respondent with D.B.Singh, appellant -Vs- D.K.Shukla and others, respondents reported in 2004 AIR SCW 2082*** that the courts or Tribunals do not sit as the appellate authority over the transfer orders. The questions involved as to whether the transfer order was passed due to political pressure or not is a disputed question of fact which

cannot be gone into by the High Court while exercising writ jurisdiction.

(7) The petitioner has made allegations that in fact he has been transferred at the instance of respondent nos.3 and 4 because he happens to be the brother of a Congress worker but these allegations are specifically denied by respondents no.1 and 2. The allegations in relation to a complaint being filed against the petitioner by these private respondents have also been denied by respondents no.1 and 2 and these respondents have simply uttered that the transfer of the petitioner has been effected in a generalized manner within the frame work of the policy and is not at all connected either with any complaint or with any pressure of respondents no.3 and 4. As laid down by the apex Court, the allegations of political pressure etc., are the questions of fact but in this case even the above facts, have not been supported by any material on record except the vague and general pleadings of the petitioner and denial by the respondents. There is no material for this Court to assess as to whether there was any political pressure or there was any complaint against the petitioner. This ground is vague and general and the same cannot be entertained.

(8) Same is the result with the ground of extraneous consideration. In case of general transfer under the policy, particularly in case when the petitioner is posted in his present

place of posting since 14.6.2000, unless the contrary is brought on record it cannot be said that a transfer after lapse of 4 years would be a transfer on extraneous considerations.

(9) About the malafides and arbitrariness, learned counsel for the petitioner relies upon the allegations raised in the writ petition and submits that since the petitioner happens to be the brother of a congress worker, therefore, he has been transferred from his present place of posting i.e., from Premnagar to Village Dhavli in Block Ramchanderpur. He further prays for assessing the malafides also on the ground that the petitioner has been disturbed from his present place of posting at the instance of the complaints made by respondents no.3 and 4.

(10) I have prepared the records on this line also. The said transfer is an intra-district transfer and there is no violation of any statutory provision in this matter. As I have already stated above, no complaints of respondents no.3 and 4 have been brought on record. Even the Collector has denied about any such complaint made by respondents no.3 and 4 against the petitioner. The transfer has not been made on any complaint. If the malice would have been on the part of these respondents, it would have been brought on record by the petitioner by pointing out any such instance or act which may constrain a normal man to hold it established on record for challenging the validity of an order of

transfer. The petitioner has not pleaded or brought on record that his transfer is malafide because he has been thrown to a remote/distant place from where he was working that too at the instance of respondent nos.3 & 4. Simple transfer of an employee cannot be held to be malafide. If the ground of malice is taken then what benefit or loss is going to be caused also becomes a factor for consideration. The petitioner has neither pleaded nor established as to what is gained by shifting the petitioner from Premnagar to Dhavli, how it will be beneficial to the persons of other party or how this action is in fact favouring any one or how it is troublesome for the petitioner when he is directed to work in Dhavli in place of Premnagar in the same capacity on the same post. If all these facts are unanswered or unelaborated by way of pleading or by way of placing relevant documents on record or by way of quoting instances or antecedents then it cannot be said that in fact the transfer of the petitioner has been actuated with malafide intentions. In fact, after considering the arguments advanced by counsel for the parties it appears that the petitioner has not been able to substantiate that the impugned order of transfer was passed malafide against him or the same was a result of an arbitrary action on the part of transferring authority. The vague and general allegations cannot establish arbitrariness or malafide against any person so as to interfere with his act which he has done in the official capacity in a general manner within the frame work of the policy in accordance with law. I am fortified in

my views by a decision of the apex Court rendered in the matter of ***Rajendra Roy –Vs- Union of India and others reported in AIR 1993 S.C. 1236,*** which lays down that it may not be always possible to establish malice in fact in a straight cut manner. In an appropriate case, it is possible to draw reasonable inference of mala fide action from the pleadings and antecedent facts and circumstances. But for such inference there must be firm foundation of facts pleaded and established. Such inference cannot be drawn on the basis of insinuation and vague suggestions. (Please see Para 7).

(11) In the series of judgments, the Apex Court has held that the transfer is an incidence of service and is not to be interfered with by the Courts unless it is shown to be clearly arbitrary or visited by malafide or infraction of any prescribed norms of principles governing the transfer. Referring to the decisions reported in ***1995 (Suppl) 4 SCC 169 (Ambani Kanta Ray –Vs- State of Orissa)*** and ***AIR 1993 SC 2444 (Union of India –v- S.L. Abbas)***, the apex Court has laid down this law in the matter of ***Kendriya Vidyalaya Sangathan –Vs- Damodar Prasad Pandey and others reported in 2004 AIR S.C.W. 5563.*** In this judgment itself, the apex Court in latter part of Para 4 mentioned the observations rendered in the matter of ***Union of India & others –Vs- Janardan Debanath and another (2004) 4 SCC 245*** that :-

> *"No government servant or employee of a public undertaking has any legal right to be posted for ever at any one particular place or place of his choice since transfer of a particular employee appointed to the class or category of transferable posts from one place to another is not only an incident, but a condition of service, necessary too in public interest and efficiency in the public administration. Unless an order of transfer is shown to be an outcome of malafide exercise or stated to be in violation of statutory provisions prohibiting any such transfer, the Courts or the Tribunals normally cannot interfere with such orders as a matter of routine, as though they were the appellate authorities substituting their own decision for that of the employer/ management, as against such orders passed in the interest of administrative exigencies of the service concerned".*

The apex Court further referred to the decision reported in the matter of ***National Hydroelectric Power Corpn. Ltd., -vs- Shri Bhagwan, (2001) 8 SCC 574***.

(12) The above series of judgments pronounced by the apex Court at various points of time go to show that a very limited scope is given for interference with an order of transfer passed by the competent authority. If the jurisdiction and the authority is not challenged nor there is any challenge on the ground of violation of any statutory rules then unless the malafide, arbitrariness or extraneous considerations are established by coming forward with definite pleadings and by bringing some evidence on record, it cannot be said that the transfer which has been shown to be purely on the administrative exigency will not be accepted to be a normal transfer.

(13) In the present case, in fact, the petitioner has been failed to definitely plead and substantiate about malafides or the arbitrariness on the part of the respondents. He has also been failed to establish any instance of extraneous consideration or political motivation, in absence of which the contention of the respondents regarding transfer on administrative ground is to be upheld. When the petitioner who is posted at a place for more than 4 years has been transferred by the authorities against which the petitioner could not establish any of the aforesaid grounds then this court is left with no option except to dismiss the petition. In fact, this Court finds no merit in the petition and the same is dismissed without any order as to the costs.

Sd/-
Sunil Kumar Sinha
Judge
23.02.2005

/Rao/